

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENNETH A. ROGERS,

No. C-14-3087 EMC (pr)

Petitioner,

v.

**ORDER DENYING PETITIONER'S  
MOTION FOR SUMMARY JUDGMENT**

GARY SWARTHOUT, Warden,

Respondent.


Petitioner filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his state court conviction for conspiracy to commit murder and attempted murder with premeditation. On July 25, 2014, the Court issued an order to show cause and set a briefing schedule that calls for Respondent to file a response to the petition no later than October 3, 2014, and Petitioner to file a traverse no later than October 31, 2014.

Petitioner has filed a motion for summary judgment, seeking to have one of his claims adjudicated within the constraints of Federal Rule of Civil Procedure 56. It would unnecessarily consume judicial resources to consider habeas claims in the context of a summary judgment motion (where the focus is on the existence of any triable issue of fact) when the same claims will be considered at about the same time without the constraints of summary judgment proceedings (i.e., the court can decide habeas claims even if the parties dispute facts or inference therefrom). This is especially true where the limitations of 28 U.S.C. § 2254(d) and (e) apply to a claim and the focus is primarily on the state court's resolution of the facts rather than this Court's independent assessment of the facts. Petitioner's motion for summary judgment therefore is **DENIED**. (Docket # 8.)

Petitioner should assert his arguments in his traverse, and that traverse should not be filed until after Respondent files an answer to the petition.

IT IS SO ORDERED.

Dated: September 3, 2014

  
EDWARD M. CHEN  
United States District Judge